

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951. (This is a PLR).

September 2, 1999

Dear Mr. Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of July 30, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I, PERSON1, and my son, PERSON2, are in the process of incorporating a new company as a building material and operational supply retailer. The company will be headquartered in CITY, Illinois.

The company will buy products wholesale and sell retail to the public. It will also sell products to contractors who will be constructing improvements in an Enterprise Zone of CITY and COUNTY for companies in which we are major owners.

Since sales taxes are waived in Enterprise Zones when purchases are made from within the government jurisdictions of the zone, we request a private letter ruling regarding the sales tax waiver.

The Enterprise Zone involves 63 acres and full development is expected to require several years.

The Department has not previously ruled on this or a similar issue for us and no previous request has been made.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone.

In order for businesses to qualify for the exemption as retailers, they must comply with the following requirements:

1. Retailers must have an identifiable physical presence in the municipality or the county that has established the enterprise zone;
2. Retailers must register with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone;
3. Retailers must be able to document the acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone.

In order for the enterprise zone building materials exemption to be claimed, it must be shown that qualifying building materials were purchased from a retailer located in the jurisdiction that created the enterprise zone into which the building materials will be incorporated. It is critical that a clear paperwork trail exists showing that buyers purchased the materials from qualified retailers. In general, the following two transactions must exist:

1. Sales from suppliers to retailers who are located in the jurisdiction that created the enterprise zone (exempt as sales for resale); and
2. Sales from retailers who are located in the jurisdiction that created the enterprise zone to buyers (exempt by reason of the enterprise zone building materials exemption).

Each of these transactions must exist independent of the other and the exemption applicable to each transaction must be documented. We urge taxpayers not to be cavalier in structuring these transactions. Generally, the following documentation establishes the two transactions and the available exemptions:

1. Sales from suppliers to retailers:
 - a. Purchase orders from retailers to the suppliers;
 - b. Certificates of Resale from retailers to suppliers (see the enclosed copy of 86 Ill. Adm. Code 130.1405, which describes the requirements for Certificates of Resale);
 - c. Invoices from suppliers to retailers; and
 - d. Payments to suppliers from retailers.
2. Sales from retailers to purchasers:

- a. Purchase orders from purchasers to the retailers;
- b. Enterprise zone building materials certifications from purchasers to retailers containing all of the information set forth at 86 Ill. Adm. Code 130.1951(a)(3);
- c. Invoices from retailers to purchasers; and
- d. Payments to retailers from purchasers.

There is no requirement that the materials be physically received at the retailer's location.

You have indicated that the building material and operational supply retailer will have an identifiable physical presence in the municipality or the county that has established the enterprise zone. Your letter did not indicate that the retailer will register with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone. Please note that such registration is required. Further, you have indicated that the retailer will sell to the public as well as construction contractors. Please note that as stated above, the retailer must be able to document the acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone.

If the sales of the building materials are made in compliance with the above requirements, such sales will qualify for the enterprise zone exemption.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.